

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
(317) 232-9855

**FISCAL IMPACT STATEMENT**

**LS 7240**

**BILL NUMBER: HB 1584**

**DATE PREPARED:** Jan 18, 1999

**BILL AMENDED:**

**SUBJECT:** Bail and controlled substance offenses.

**FISCAL ANALYST:** Susan Preble

**PHONE NUMBER:** 232-9867

**FUNDS AFFECTED:**      **GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** Local

**Summary of Legislation:** This bill has the following provisions:

- (1) Establishes a rebuttable presumption for purposes of admitting a defendant to bail, that: (1) there is a risk of nonappearance by the defendant; and (2) the defendant poses a risk of physical danger to another person or the community if the court finds probable cause to believe that the defendant committed a controlled substance offense classified as a Class A felony or Class B felony;
- (2) Provides that, if a defendant has been charged with a controlled substance offense classified as a Class A felony or Class B felony, the court must impose at least one of certain described conditions;
- (3) Requires a court that is setting the amount of bail for a defendant who has been charged with a controlled substance offense classified as a Class A felony or Class B felony to take into account the amount of the controlled substance involved in the offense;
- (4) Requires a court to carefully consider the necessity of setting a substantial amount of bail to assure a defendant's appearance in court or to assure the physical safety of another person or the community if the defendant has been charged with a controlled substance offense that is classified as a Class A felony or Class B felony.

**Effective Date:** July 1, 1999.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** Provision (1) of this bill establishes a rebuttable presumption for purposes of admitting a defendant to bail, that: (1) there is a risk of nonappearance by the defendant; and (2) the defendant poses a risk of physical danger to another person or the community if the court finds probable cause to believe that the defendant committed a controlled substance offense classified as a Class A felony or Class B felony. Because of this requirement, courts may set bail for a higher amount for defendants

charged with the specified offenses than is currently the practice. Passage of this bill may increase the number of criminal defendants who might be retained in jail because they could not afford bail.

The additional number of persons who might be retained in jail is indeterminable. During CY 1997, the courts reported 14,980 criminal A-C felony filings. The Indiana Sheriffs Association estimates that the daily cost of incarcerating one person in jail is \$44.

The Department of Correction reports that in the first nine months of FY 1998, 105 felons were incarcerated with controlled substance offenses classified as Class A felonies, and 720 felons were incarcerated with controlled substance offenses classified as Class B felonies. These figures include juveniles who were adjudicated as adults.

**Explanation of Local Revenues:** When a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee based on a percent of the value of the bond is assessed against the bondsman. Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund while the other half is deposited in a County Extradition Fund.

Passage of this bill potentially increases revenue from the Late Surrender Fee if a proportionately greater percentage of criminal defendants use a bail bondsman. In addition, if the bondsman does not return the criminal defendant within 210 days of the mailing notice, the court declares 30% of the face value of the bond to be forfeited. The forfeited amount is deposited into the Common School Fund. Local governments reported \$804,525 in CY 1997 from the Late Surrender Fee. A separate amount was not available on the amount of forfeitures that were deposited into the Common School Fund.

When a criminal defendant executes bail through a 10% cash deposit with the Clerk of the Circuit Court, the clerk has the option to collect a Bond Administration Fee of 10% of the bail bond or \$50, whichever is less. Local governments reported collecting \$819,207 in bond administration fees in CY 1997. In addition, if the criminal defendant has used public defender services, the court must order the clerk to remit the difference, if any, and retain the rest between the bond deposit and the cost of pauper defense. The retained amount is deposited in the Supplemental Public Defender Services Fund. During CY 1997, \$946,839 was collected in Supplemental Public Defender Fees.

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts; circuit court clerks; local law enforcement agencies; jails.

**Information Sources:** 1997 Indiana Judicial Report, Vol. I ; IC 27-10-2-12; IC 35-48-4; Department of Correction.